

REED GILMORE

IBLA 79-101

Decided March 29, 1979

Appeal from decision of the Colorado State Office, Bureau of Land Management declaring oil and gas lease Colorado 26237 null and void in part.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Lands Subject to--Regulations: Generally

A noncompetitive oil and gas lease issued for lands which, at the time of the lease application, had been posted erroneously as available for leasing but were then included in a prior lease, will be allowed to continue in effect where the first lease expired before the second lease issued and no questions of public policy or third party rights are contravened by the lease issuance.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell and Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Reed Gilmore appeals from a November 2, 1978, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring his oil and gas lease C-26237 null and void as to the W 1/2 sec. 1 and all of sec. 2, T. 4 S., R. 100 W., sixth principal meridian, Colorado. The decision below declared the lease void as to the lands in question saying:

An examination of the records of this office indicates that at the time the offer for the lease was submitted by Reed Gilmore during the simultaneous filing period in December, 1977, the above described lands were encompassed by Oil and

Gas lease Colorado 3068. Such lease did not expire until December 31, 1977. Accordingly the offer to lease such lands was ineffective at the time it was submitted and no lease could be issued as a result of the offer, insofar as it was ineffective.

The cause of the confusion, which resulted in the lands described above being posted erroneously on the simultaneous list for December 1977, may be the fact that leases C-03068-A and C-3068 lay immediately adjacent to each other. At one time, oil and gas lease C-03068-A encompassed all the lands in both leases. However, as to the lands described in the first paragraph C-03068-A expired July 31, 1963. Subsequently the lands were included in lease C-0112827-A. Thereafter, on December 12, 1967, lease C-3068 was issued, effective January 1, 1968 encompassing the described lands and remained effective until expiration on December 31, 1977. Lease C-03068-A terminated in its entirety on July 13, 1976 when the lessee filed a relinquishment.

The lease which is the subject of this controversy was issued March 15, 1978, with an effective date of April 1, 1978. On the date of its issuance, the lands in issue were unencumbered by oil and gas leases. No provision of statute law interdicted the issuance of the lease in question.

Appellant argues that the partial cancellation of his lease was unwarranted in these circumstances since no third party rights or considerations of public policy necessitated such action. Appellant concedes that the applicable regulation, 43 CFR 31.12.1, should have operated to prevent the parcels here at issue from appearing on the list of lands available for leasing under the simultaneous filing procedures. He argues, however, that, even though his offer could have been rejected prior to the issuance of the lease, the termination of all third party interests in the lands before such issuance brings him within the protection of:

[A]n equitable policy that, in instances where a lease is issued by the Bureau of Land Management in violation of its own regulations or instructions and not of the statute, and where rights of third parties are not involved, such violations are not a basis to either invalidate a lease or to warrant its cancellation.

While the foregoing may be an overbroad statement of Department policy, we agree that, under the present facts, appellant's lease should not have been cancelled.

[1] In Eleanor S. Avedisian, A-30402 (May 14, 1965), it was held that an oil and gas lease offer is properly rejected where the land applied for is included in an existing lease, even if the existing lease is held by the offeror. While Avedisian did not, therefore, involve third party rights, it is distinguishable since no lease ever issued in that case nor was there any evidence, as here, that the existing lease would have expired prior to issuance of the lease sought by the offeror. See also Mike Epstein, A-30277 (February 3, 1965); George W. Denkhous, A-29614 (September 17, 1963); Edwin G. Gibbs, 67 I.D. 229 (1960), all holding lease applications to be properly rejected where lands applied for were included in existing leases.

In George E. Conley, 1 IBLA 227 (1971), this Board held that land included in an outstanding oil and gas lease is not available for leasing to others and found that an application to lease such lands must be rejected even where the outstanding lease was improperly issued. Our decision in Conley, however, allowed the outstanding leases to be amended so as to comply with applicable regulations and this amendment was allowed due to the "absence of any intervening rights" following the rejection of the outstanding application to lease.

Although the defect in the outstanding leases in Conley concerned the description of the lands to be leased, that case may fairly be described as holding that, in the absence of third party rights or countervailing considerations of public policy, a lease which was issued in violation of regulations or departmental procedural guidelines may be allowed to remain in effect if the defect can be readily cured by an amended lease application. Cf. D. Miller, 63 I.D. 257 (1956).

Similarly, in Howard S. Bugbee, 29 IBLA 30 (1977) we set aside a BLM decision cancelling an oil and gas lease for failure to provide a bond which was required by a regulation which was subsequently amended so as to delete the bond requirement. As we stated in Bugbee, at p. 32, "Where a regulation is amended in a way that benefits a lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases." See also, Duncan Miller, 28 IBLA 292 (1976), and Norman H. Nielson, 72 I.D. 514 (1965).

In L. N. Hagood, A-25912, 60 I.D. 462, 464 (1951), it was held that where the land sought in an application for a noncompetitive oil and gas lease is included in a lease based on a prior application,

and such lease is subsequently relinquished, and a lease is thereupon issued in response to the application first mentioned, the circumstance that this application should have been rejected during the interim does not make the lease void, stating:

It appears that the failure to reject Mr. Hagood's application as to lot 11, sec. 9, following the inclusion of this tract in the Richfield lease in 1944, and the issuance of the lease on lot 11, sec. 9, to Mr. Hagood in 1949 on the basis of his suspended application, violated an established administrative practice in the Department, but that the issuance of the lease to Mr. Hagood did not violate any provision of the Mineral Leasing Act. Moreover, the record does not indicate that Mr. Hagood has failed to discharge any of his obligations following the receipt of the lease. Under these circumstances, there does not appear to be any sound legal basis for canceling Mr. Hagood's lease as to lot 11, sec. 9. Cf. Antonia Ziegler, Charles Vaclav Ziegler, A-24537 (September 18, (1947).

The case at bar is more difficult than Hagood, since here the lands were, by virtue of the regulation, closed to filing when appellant's offer was filed. But no statutory provision interdicted such filing and leases issued in violation of regulations without prejudiciary rights of third parties may be permitted to stand. Earl W. Hamilton, 61 I.D. 129 (1953).

We believe that the considerations of policy and law here at issue closely parallel those which gave rise to our decisions in Conley and Bugbee. The fact that appellant Gilmore (1) applied for a noncompetitive lease only after the lands in question were posted for filing, and (2) was issued a lease only after all intervening rights had lapsed, clearly distinguishes his case from those involving refusals to issue leases for lands included in existing leases. Avedisian, supra. It appears, moreover, that no administrative burden will arise from a rule allowing lessees in Gilmore's position to retain their leases. Since no considerations of public policy argue against such a result, we find that the cancellation of this lease is unwarranted.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decision appealed from is reversed and remanded for proceedings consistent with this opinion.

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Frederick Fishman  
Administrative Judge

We concur.

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Edward W. Stuebing  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

